

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
PACIFIC GRINDING WHEEL  
COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 82-23

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.03(b) of Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, presiding, and Gayle Rothrock, at a formal hearing in Lacey, Washington on June 7, 1982. The proceedings were electronically recorded.

Appellant was represented by its attorney Robert B. Willoughby; respondent was represented by its attorney Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

Pursuant to RCW 43.21B.260, respondent has filed with the Board a certified copy of its Regulation I and amendments thereto, which are noticed.

II

On January 7, 1982, at about 9:50 a.m., respondent's inspector noticed a bluish-colored plume rising from appellant's site at 13120 Highway 99 North, near Marysville. After properly positioning himself, he observed the plume which was coming from the stack of kiln #1, at appellant's plant, and recorded opacities ranging from 60% to 70% for nine minutes during a one hour period. After discussing the matter with appellants, the inspector issued Notice of Violation No. 18747. On February 1, 1982, respondent sent by certified mail Notice and Order of Civil Penalty of \$250 for the alleged violation of Section 9.03 of respondent's Regulation I. The Notice and Order of Civil Penalty is the subject of the instant appeal.

III

Section 9.03 of respondent's Regulation I makes it unlawful for any person to cause or allow the emission of any air contaminant for a period totaling more than three minutes in any one hour which is of an opacity equal to or greater than 20%.

Section 3.29 of Regulation I provides for a civil penalty of up to \$250 per day for each violation of Regulation I.

IV

Appellant raised the defense that the opacity recorded by respondent's inspector was caused by a startup condition. We find that the opacity was caused by startup, but appellant did not immediately notify respondent of the startup occurrence as required by Section 9.16 and in fact did not attempt to notify respondent until after respondent's inspector had completed his observation of the opacity violation.

V

Appellant raised the defense that the inspector did not place himself approximately perpendicular to the direction of the plume. We find that the inspector was in a proper position to observe the plume while the wind condition changed from calm to a light south wind.

VI

Appellant raised the defense that the observed opacity was due to uncondensed water vapor in the plume. We find that all of the flue and the lower part of the afterburner had been relined and that the mortar was not yet dry. Some drying was going on and some steam was being produced by the drying process, but appellant did not attempt to quantify the ratio of steam to smoke from burning walnut shells contained in the matrix of the grinding wheels being heated in the kiln. It does not appear that the plume contained more than an incidental amount of uncondensed water. It is clear that a substantial portion of the opacity was caused by smoke from the burning walnut shells. Had the afterburner been operating it would

1 have consumed the walnut smoke preventing it from being discharged  
2 through the stack into the atmosphere.

3 VII

4 Appellant also raised the defense that the inspector did not  
5 properly follow the procedure for determining the opacity of a wet  
6 plume. Appellant did not establish that there was sufficient  
7 uncombined water vapor in the plume to cause it to be treated as a wet  
8 plume.

9 VIII

10 Any Conclusion of Law which should be deemed a Finding of Fact is  
11 hereby adopted as such.

12 From these Findings the Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 Appellant violated Section 9.03 of Regulation I as alleged, on  
16 January 7, 1982, by allowing or causing an air emission of smoke in  
17 excess of the limits established by the regulations.

18 II

19 Startup is a defense which is available only when the requirements  
20 of Section 9.16 are strictly complied with. Appellant did not  
21 immediately notify the Puget Sound Air Pollution Control Agency of the  
22 startup condition and thus failed to comply with a basic requirement  
23 of Section 9.16.

24 III

25 Appellant did not establish that the inspector failed to utilize  
26 proper procedures in observing the plume.

IV

Section 9.03(e) provides:

This section will not apply when the presence of uncombined water is the only reason for the failure of the emission to meet the requirements of this section.

The evidence established that the emissions contained smoke from burning walnut shells, so it is clear that the presence of uncombined water was not the only reason for the failure to meet emission standards.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters the following

ORDER

The \$250 civil penalty issued to Pacific Grinding Wheel Company, Inc., by the Puget Sound Air Pollution Control Agency is affirmed, but \$50 thereof is suspended on the condition that appellant does not violate any of respondent's regulation for a period of twelve months.

DATED this 17<sup>th</sup> day of June, 1982.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington  
NAT W. WASHINGTON, Chairman

Gayle Rothrock  
GAYLE ROTHROCK, Vice Chairman

Did Not Participate  
DAVID AKANA, Lawyer Member

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